

BENTON COUNTY PLANNING BOARD
Public Hearing Meeting Minutes
July 18, 2007, 6:10 p.m.

Call to Order & Roll Call: The following Benton County Planning Board members were present: Scott Borman, John Butler, Bill Kneebone (Temporary Chair), Adele Lucas, and Heath Ward. Melana Ewing and Tim Sorey were absent. The following Benton County Planning Office staff members were present: Ashley Pope, Kathleen Davis, and Karen Stewart.

Announcements:

There were no announcements.

Old Business:

1. Tract Split - **Al Williams** - Cherokee Road, Gentry - Bates & Associates

Bryan Bunch of Bates & Associates was present.

Ms. Pope stated that the applicant needed a waiver due to the omission of the parent tract on the survey; the applicant has met all other requirements. Staff recommended approval of the waiver.

There was no Board discussion; there was no public comment on the matter.

Mr. Borman made a motion to approve, Ms. Lucas seconded the motion. The motion was passed unanimously.

New Business:

1. Informal Plat / Replat - **Ray Brown Subdivision, Lot 9** - Billy Goat Bluff, Garfield - W / R Consulting

Karen Gaither was present.

Ms. Gaither stated that she is missing the signature of Mark Patterson on the road-naming of Lighthouse Lane. She stated that he has no problem signing it, but he has been out of town.

Ms. Pope stated that one of the stipulations was that the driveway and signage must be shown on the replat: the driveway is shown, the signage is not shown, but the signage is not required on a replat. Ms. Pope stated that another stipulation was that the information on the septic pits must be submitted. She stated that the results of testing were submitted but that Staff still needed a letter stating that the results were good.

Ms. Gaither asked if Staff had not received a letter from Rebecca Corbitt; Ms. Pope stated Staff had not received a letter - only the pit results.

The applicant was also to ensure that there are no existing written covenants. Ms. Pope stated that other than the letter from the environmental consulting firm, all stipulations from TAC had been met.

Mr. Kneebone asked if the applicant had agreement with her neighbor, Jake Van Dorn, regarding any potential damage to his driveway during construction. Ms. Gaither stated that she had spoken with Mr. Van Dorn and agreed that she would take responsibility for necessary repairs. She stated that she does not have a written agreement, except in a letter from Bill Platz of W/R Consulting stating that she would be widening the road to 20 feet and paving it.

Chair opened public comment regarding the subdivision; there was no public comment on the project. Public comment was closed.

Mr. Butler made a motion to approve the project subject to the two remaining stipulations (signature of the remaining adjoining property owner and the letter from Rebecca Corbitt); Mr. Borman seconded the motion. Borman, Butler, Kneebone, and Ward all voted in favor of the motion. The motion was passed.

2. Large Scale Development - **Wehmeyer Wireless (cell tower)** - Wehmeyer Road, Bentonville - Satterfield Land Surveyors

Dave Reynolds of Smith Two Way Radio was present, representing Callahan Joint Venture.

Ms. Pope stated that this item was an application to place a cellular tower on a corner lot on Wehmeyer Road. The applicant supplied the necessary site plans, but is requesting a variance from the set-back ordinance due to limited space available. The required set-back is the height of the tower plus fifty feet.

Staff recommended approval, although some questions regarding covenants and deed restrictions exist. Ms. Pope pointed out that Staff does not enforce covenants.

Chair opened the matter for public comment.

Heather Schmiegelow (Matthews, Campbell, Rhoads, McClure, Thompson and Fryauf Attorneys) of 119 S 2nd Street, Rogers, stated that she was present on behalf of the Hendersons, who own property adjacent to the lot on which the proposed cell tower would be located. Ms. Schmiegelow stated that the property is part of the Rush Estates Subdivision, which is subject to restrictive covenants. She stated that the covenants were filed in June of 1973 and are still in effect and that they state that the land is to be used only for residential purposes. She stated that her clients were not requesting that the Board enforce the covenants, but that the Board recognize and honor the covenants and deny the applicants request.

Joe Henderson of 8601 Wehmeyer stated that the cell tower would be 200 feet from his house, it would be towering over his house, and it would be effectively in his front yard. He also stated that there is another cell tower within a half of a mile, which he suggested this applicant should "piggyback" onto.

Stan Wehmeyer (did not state address) stated that he disapproves of the cell tower because it would go against the covenants. He also stated that the area across the road on Dartmoor would be better suited to a cell tower, since the tower would be less conspicuous. He stated his concern that the tower would be an eyesore.

Mr. Butler asked if Mr. Wehmeyer had developed the Rush Estates Subdivision; Mr. Wehmeyer stated that he did not.

Pat Palmer of 12874 Dartmoor Rd stated that she was concerned about the cell tower affecting her property value and about the possibility of other commercial entities moving into her neighborhood.

Betty Burr of 8725 Wehmeyer stated that her property is where the proposed cell tower would be built. She also stated that her lawyer gave an opinion on the issue of whether or not a cell tower would violate the covenants on June 6, 2004. In the opinion, James A. Penix, Jr. stated that he did not feel that the Burrs would be violating any covenants. Mrs. Burr stated that they researched this issue thoroughly and did not feel that they were in violation in any way.

Mr. Butler addressed Ms. Schmiegelow, asking if the conditions she referred to earlier were from 1973; she stated that they were. Mr. Butler then stated that the letter from Mr. Penix that the Board received refers to a document from November, 1971 and asked Ms. Schmiegelow if the document to which she was referring was an amendment; she stated that it was and that it was filed for record in Benton County in 1973.

Ms. Schmiegelow then stated that the cell tower would be owned by a business, Callahan Joint Venture, and she reiterated that it was clearly a violation of the restrictive covenants reserving the use of the land for residential purposes only.

Mr. Butler asked who Ms. Schmiegelow is representing; she stated that she is representing Joe and Lucy Henderson, who own the lot adjacent to the proposed cell tower location.

Mr. Borman clarified that the opinion letter was based on the 1971 covenants, but there was an amendment to the covenants in 1973. He added that there was no mention of "commercial" in the covenants - the covenants just restrict the usage to residential.

Dave Reynolds, 1590 West Center Street, Fayetteville, representing Callahan Joint Venture asked for the opportunity to speak on the matter. Mr. Reynolds called the Board's attention to the survey, pointing out that the nearest residence is 250 feet away and the tower would be over 200 feet from the road. He stated that they are asking for a variance due to a deep ravine that runs through the property, limiting the area where the tower can be placed. He stated that he brought attorney Tom Kieklak with him to give his opinion of the covenants and to discuss the Telecommunications Act of 1996. He then directed the Board's attention to the maps in the documentation that he had submitted to Staff showing current cellular service gaps and how cellular service would be improved with the addition of the proposed tower. He stated that the location for the proposed tower was not chosen at random - the location is calculated precisely and there is only a 1700-foot window in which to choose a site. Mr. Reynolds stated that it would have been their preference to be able to utilize an existing tower, but it is not feasible: the nearest tower is already overloaded, according to the owners of said tower. He described the tower as a mono-pole construction with no guy-wires or lighting; the design is kept simple in order to minimize the visual impact. At first,

there will only be one carrier on the tower (at the 172-foot level); other carriers may also utilize this tower in the future.

Mr. Ward asked if the project would involve only the mono-pole, if there were any plans to build a larger structure in conjunction with the tower, and if the land was available should a larger structure be required in the future. Mr. Reynolds answered that technically the land is available, but that they have no plans for a larger structure. He also stated that he understood that if they do decide to expand the project at all, they would have to bring their plans back before the Board.

Tom Kieklak, attorney representing Callahan Joint Venture, stated that cities and counties got out of the enforcement of covenants back in the Civil Rights era for good reason: covenants are contracts between private owners and government should not try to enforce these private contracts. He encouraged the Board to not get involved in this dispute between private land owners.

Ms. Lucas enquired about the Telecommunications Act of 1996 and whether or not it overrode some of the covenants.

<<<Part of recording missing, the following is from notes:

Ms Pope stated that the applicant is requesting a variance from the required 50 feet. She added that the Board could consider requiring landscaping as a condition for approval. She discouraged the Board from considering the covenants when making their decision.

Mr. Butler stated that he was uncomfortable due to the covenant issues; Mr. Borman stated that the covenants are a civil matter.

Mr. Borman made a motion to approve the application and variance, subject to the applicant providing evidence that another tower could not be used for co-location; Mr. Ward seconded the motion.

Borman and Ward voted to approve the project; Butler, Kneebone, and Lucas voted against the project. The motion was denied.

...end of missing part>>>

3. Large Scale Development - **Beaver Shores Wireless (cell tower)** - Cypress Lane, Rogers - Satterfield Land Surveyors

Dave Reynolds of Smith Communications, LLC represented the project.

He described the project as a 195-foot mono-pole to be located at the Beaver Lake Fire Department; there are no existing cell towers within over a mile of this location, and there is no Verizon service within the area at all. They will have a land lease agreement with the fire department and the revenue generated under this agreement will be put into a community resource fund. He stated that they are asking for a variance from the set-back from the road, as the fire department's land is not deep enough for the project to meet the 225-foot set-back; the tower would be 179 feet from the road. He stated that he believed that the project has met all other requirements. He stated that the tower would be the same as the proposed

Wehmeyer cell tower: a mono-pole tower, one carrier, no lighting, with a small building at the base of the tower.

Mr. Borman asked if this project is for Smith Communications; Mr. Reynolds stated that it is. Mr. Borman stated that he has a conflict of interest in the matter; his employer has existing communications that rely on Smith Communication towers. Mr. Borman stated that he would have to abstain from voting on the project and excused himself from the meeting.

Mr. Butler stated that Beaver Shores has covenants and restrictions; Mr. Reynolds stated that the project location is outside of the area where covenants apply. Mr. Butler then asked what the closest structure to the project location aside from the fire department building would be; Mr. Reynolds referred to the survey and stated that he believed it was far enough away, but he did not know the specific distance.

Chair opened the project for public comment.

Don Glore of 16119 Cypress Lane, Rogers, stated that the tower would violate covenants in the area. He stated that he was approached about three months ago by someone from Hot Springs who wanted to place a cell tower on his personal property. He stated that he did not want the cell tower and never called or contacted the individual. He informed the Board that he received notification of the project and then the property owners had a meeting and were all in favor of the project. He stated that the first commandment in the Bible says that we are to worship only one God and stated that he felt in the case of this project, money is being worshipped. He reiterated that he is against the project and he expressed concern for his animals, his neighbors, and the bee population in the area.

Norma Sue Hall of 16058 Cypress Lane, Rogers, stated that the proposed cell tower would be in her front yard. She expressed concern that the cell tower would lower her property value, that it would be unsightly, and for the safety of children in the area (since children like to climb). She also expressed concern that Verizon might sell the tower in the future and that something worse might be put in its place.

Karen Little Smith of 8023 Old White River Road, Rogers, stated that she lives about 200 feet from the proposed tower. She objected to the construction of the tower, stating that she just bought her home in November for the view of the lake and the trees in the area.

Chair closed public comment.

Mr. Ward asked Mr. Reynolds if there would be any fencing or other protection for the proposed tower; Mr. Reynolds stated that there would be; one of the Beaver Lake Fire Department's stipulations for the project is that neither the base of the proposed tower nor any of the associated equipment could be visible from the neighboring properties. He stated that there will be an 8-foot chain link fence with opaque slats around the base of the tower for concealment; the building itself will be 7 feet tall with a flat roof. He also informed the Board that there are numerous old-growth pine trees surrounding the area and added that shrubbery would be added to camouflage the project area. He stated that the tower will be barely visible from the surrounding properties.

Mr. Kneebone enquired about covenants in the area; Mr. Reynolds stated that according to the Beaver Lake Fire Department, there are no covenants that apply to the project location. He then reviewed a bit of the history of the property, stating that it has always been exempt from any covenants.

Mr. Reynolds reiterated that this would be a 195-foot tower with no lighting.

Staff recommended approval of the project.

Ms. Lucas made a motion to approve the project, which was seconded by Mr. Ward.

Mr. Butler asked Mr. Reynolds to verify the height of the tower; Mr. Reynolds answered that it would be 195 feet.

Mr. Butler asked about some concrete buildings within the fall radius of the tower; Mr. Reynolds answered that there might be outbuildings belonging to the fire department, but no residences within the fall radius.

Mr. Butler asked about access to the site and any possible easements; Mr. Reynolds stated that the site is directly off of Cypress Lane and would be accessed via the fire department's property.

A member of the public stated that the access they were going to use is his driveway and that he just spent seven thousand dollars to blacktop it. Chair informed the man that public comment was closed.

Mr. Butler asked Mr. Reynolds to address the access question again; Mr. Reynolds stated that he was not certain what access the fire department uses, but that access to the cell tower would not ever involve a private citizen's property.

Mr. Butler asked about how far the tower would be to Cypress Lane; Mr. Reynolds answered that he wasn't certain, but he believed it to be about 170 feet. Mr. Butler stated that it appears to be about 93 feet to the edge of the pavement on the survey. They then reviewed the survey and Mr. Reynolds agreed that it does appear to be about 93 feet.

Ms. Pope clarified that the motion would include the variance from set-back that the applicant is requesting; the set-back should equal the height of the tower plus 50 feet (245 feet). She stated that the applicant meets the requirements on all but one side of the property.

Ms. Pope asked if there is a residence within 245 feet. Mr. Reynolds stated that he did not have the exact measurement; Ms. Pope stated that the Board would need more information.

Mr. Butler stated that the requested variance is for less than half of the required set-back and he is uncomfortable approving the project without specific information on the distance of nearby residences. He also expressed concern that if the tower ever collapsed, it would be across Cypress Lane.

Mr. Reynolds stated that, should the tower ever fall, it is designed to collapse on itself.

Ms. Lucas made a motion to withdraw the motion to approve the project; Mr. Ward seconded the motion. A show of hands was made - the Board agreed to allow the motion to approve to be withdrawn.

Mr. Butler made a motion to table the project; Ms. Lucas seconded the motion. Butler, Kneebone, Lucas, and Ward all voted in favor; Borman abstained. The motion was passed.

Other Business:

1. Wilson Cemetery – **Ben and Evalena Mayo** – Waiver of Large Scale Development Request

Ben Mayo was present.

Ms. Pope stated that the Mr. and Mrs. Mayo purchased one acre of land to add space for more burial plots in Wilson Cemetery. Staff recommended approval of the waiver from large scale development requirements.

Chair opened the matter for public comment; there was none and public comment was closed.

Mr. Butler asked the location of the cemetery; Mr. Mayo stated that the cemetery is on the Washington and Benton County line, north and east of Springdale in Benton County.

Mr. Mayo stated that they have one acre of ground adjoining four acres of ground that is already being used as Wilson Cemetery, which was established in 1863. He stated no utilities or buildings will be added and the land will only be used for burial plots.

Ms. Pope stated that this application is only for a waiver of the large scale development regulations and that there is essentially no review.

Mr. Ward asked what highway or road the cemetery is near; Mr. Mayo answered that it is on Monitor Road by the old Monitor School.

Mr. Butler asked if any neighbors might object to this use of the land; Mr. Mayo answered that they bought the land from Mr. Pool and he had no objection. Mr. Mayo stated that Mr. Pool owns all of the surrounding land.

Staff recommended approval of the variance request.

Mr. Butler made a motion to approve, which was seconded by Mr. Ward. Borman, Butler, Kneebone, and Ward all voted in favor of the motion, Lucas was absent; the motion was passed.

2. **Zigmond & Joanna Pohopin** – Waiver of Large Scale Development Request

Zigmond and Joanna Pohopin were present.

Ms. Pope stated that this is an application for a daycare in a single-family residence. She stated that the house in which the daycare would be located was on the large

scale development plans for the M.O.P.I.N. project, which came before the Board several months ago. The house is on the property where commercial activity is already taking place; the daycare will care for 16 children and will be permitted by the Health Department.

Mr. Borman asked if the daycare would be State-licensed; Ms. Pope stated that it would be.

Ms. Pope stated that since the house was already located on a site plan that was submitted and approved as part of a large scale development, this request would be only be changing the use of the house. She stated that the project location is on Highway 279 near Hiwasse.

Staff recommended approval of the waiver with the condition that the applicant must submit Health Department approval to Staff.

Chair opened the matter for public comment; there was none, and public comment was closed.

Mr. Butler made a motion to approve the waiver, subject to stipulations; Mr. Borman seconded the motion. Borman, Butler, Kneebone, and Ward all voted in favor of the motion, Lucas was absent; the motion was passed.

3. **Resolution 2007-03** – A Resolution to Clarify the Administrative Procedures for Tract Splits and for Other Purposes

Ms. Pope stated that this is a resolution to clarify tract split procedures when an applicant cannot show the entire parent tract on the survey (due to financial considerations), usually in the case of a small parcel being split from a large parent tract. Ms. Pope stated that this resolution would allow some relief from the strict interpretation of the existing ordinance, which allows the Board to adopt internal procedures for the processing of tract splits.

Mr. Borman made a motion to approve Resolution 2007-03; Mr. Ward seconded the motion. Borman, Butler, Kneebone, and Ward voted in favor of the motion by a show of hands, Lucas was absent. The resolution was passed.

Adjournment

The motion to adjourn was made by Mr. Borman and was seconded by Mr. Butler. The meeting was adjourned at 7:40 p.m.